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HOUSE BILL 180

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ETHICS; AMENDING THE GOVERNMENTAL CONDUCT ACT;
PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES;
PROHIBITING CERTAIN CONTRACTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-16-2 NMSA 1978 (being Laws 1967,
Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental
Conduct Act:

A. "business" means a corporation, partnership,
sole proprietorship, firm, organization or individual carrying
on a business;

B. "competitive procurement process" means
competitive sealed bids or competitive sealed proposals made
pursuant to the procedures of the Procurement Code;

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1 ~~[B.]~~ C. "confidential information" means
2 information that by law or practice is not available to the
3 public;

4 ~~[G.]~~ D. "employment" means rendering of services
5 for compensation in the form of salary as an employee;

6 E. "family" means an individual's spouse, parents,
7 children or siblings, by consanguinity or affinity;

8 ~~[D.]~~ F. "financial interest" means an interest held
9 by an individual ~~[his spouse or dependent minor children]~~ or
10 the individual's family that is:

11 (1) an ownership interest in business; or

12 (2) any employment or prospective employment
13 for which negotiations have already begun;

14 ~~[E.]~~ G. "official act" means an official decision,
15 recommendation, approval, disapproval or other action that
16 involves the use of discretionary authority;

17 ~~[F.]~~ ~~"person" means an individual or entity;~~

18 ~~G.]~~ H. "public officer or employee" means any
19 person who has been elected to, appointed to or hired for any
20 state office and who receives compensation in the form of
21 salary or is eligible for per diem or mileage, but excludes
22 legislators and judges;

23 ~~[H.]~~ I. "standards" means the conduct required by
24 the Governmental Conduct Act; and

25 ~~[I.]~~ J. "substantial interest" means an ownership

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1 interest that is greater than twenty percent."

2 Section 2. Section 10-16-4 NMSA 1978 (being Laws 1967,
3 Chapter 306, Section 4, as amended) is amended to read:

4 "10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST
5 PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--~~[PROVIDING A~~
6 ~~PENALTY]~~.--

7 A. It is unlawful for a public officer or employee
8 to take an official act for the primary purpose of directly
9 enhancing ~~[his own]~~ the public officer's or employee's
10 financial interest or financial position. Any person who
11 knowingly and willfully violates the provisions of this
12 subsection is guilty of a fourth degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978.

15 B. A public officer or employee shall ~~[disqualify~~
16 ~~himself]~~ be disqualified from engaging in any official act
17 directly affecting ~~[his]~~ the public officer's or employee's
18 financial interest.

19 ~~[C. If the public interest so requires, the~~
20 ~~governor may make an exception to Subsection B of this section~~
21 ~~for a public officer or employee by expressing the exception~~
22 ~~and the reasons for it in writing. The exception is effective~~
23 ~~when the public officer or employee files this writing with the~~
24 ~~secretary of state.]"~~

25 Section 3. Section 10-16-6 NMSA 1978 (being Laws 1967,

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1 Chapter 306, Section 6, as amended) is amended to read:

2 "10-16-6. CONFIDENTIAL INFORMATION.--No legislator,
3 public officer or employee shall use or disclose confidential
4 information acquired by virtue of [~~his~~] the legislator's,
5 public officer's or employee's state employment or office for
6 [~~his~~] the legislator's, public officer's or employee's or
7 another's private gain."

8 Section 4. Section 10-16-7 NMSA 1978 (being Laws 1967,
9 Chapter 306, Section 7, as amended) is amended to read:

10 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR
11 EMPLOYEES.--A state agency shall not enter into [~~any~~] a
12 contract with a public officer or employee of the state, the
13 family of the public officer or employee or with a business in
14 which the public officer or employee or the family of the
15 public officer or employee has a substantial interest unless
16 the public officer or employee has disclosed [~~his~~] the public
17 officer's or employee's substantial interest and unless the
18 contract is awarded pursuant to the [~~Procurement Code~~]
19 competitive procurement process; provided that this section
20 does not apply to a contract of official employment with the
21 state or to contracts made pursuant to the provisions of the
22 University Research Park Act."

23 Section 5. Section 10-16-9 NMSA 1978 (being Laws 1967,
24 Chapter 306, Section 9, as amended) is amended to read:

25 "10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION
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1 BEFORE STATE AGENCIES.--

2 A. A state agency shall not enter into [~~any~~
3 ~~procurement~~] a contract for [~~services~~] construction or items of
4 personal property with a legislator, the legislator's family or
5 with a business in which the legislator or the legislator's
6 family has a substantial interest unless the legislator has
7 disclosed [~~his~~] the legislator's substantial interest and
8 unless the contract is awarded in accordance with the
9 [~~provisions of the Procurement Code~~] competitive procurement
10 process.

11 B. A legislator shall not appear for, represent or
12 assist another person in [~~any~~] a matter before a state agency,
13 unless without compensation or for the benefit of a
14 constituent, except for legislators who are attorneys or other
15 professional persons engaged in the conduct of their
16 professions and, in those instances, the legislator shall
17 refrain from references to [~~his~~] the legislator's legislative
18 capacity except as to matters of scheduling, from
19 communications on legislative stationery and from threats or
20 implications relating to legislative actions."

21 Section 6. Section 10-16-13 NMSA 1978 (being Laws 1967,
22 Chapter 306, Section 13) is amended to read:

23 "10-16-13. PROHIBITED BIDDING.--No state agency shall
24 accept [~~any~~] a bid or proposal from a person who directly or
25 indirectly participated in the preparation of specifications,

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1 qualifications or evaluation criteria on which the competitive
2 bidding or proposal was [~~held~~] based."

3 Section 7. A new section of the Governmental Conduct Act
4 is enacted to read:

5 "[NEW MATERIAL] CERTAIN BUSINESS SALES TO STATE AGENCIES
6 AND THEIR EMPLOYEES PROHIBITED.--

7 A. A public officer or employee, the family of a
8 public officer or employee or a business in which a public
9 officer or employee or the family of the public officer or
10 employee has a substantial interest shall not, directly or
11 indirectly, sell or be a party to any transaction to sell
12 goods, services or professional services to the state agency
13 with which the public officer or employee is associated or
14 employed. No person or business associated with the public
15 officer or employee or the family of the public officer or
16 employee shall receive a commission or shall profit from the
17 sale or a transaction to sell goods, services or professional
18 services to the state agency with which the public officer or
19 employee is associated or employed.

20 B. A public officer or employee, the family of the
21 public officer or employee or a business in which a public
22 officer or employee or the family of a public officer or
23 employee has a substantial interest shall not, directly or
24 indirectly, sell, offer to sell, coerce the sale of or be a
25 party to a transaction to sell goods, services or professional

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1 services to an employee supervised by the public officer or
2 employee. A public officer or employee or the family of a
3 public officer or employee shall not receive a commission or
4 shall not profit from the sale or a transaction to sell goods,
5 services or professional services to an employee supervised by
6 the public officer or employee. The provisions of this
7 subsection shall not apply to a person making a sale in the
8 regular course of the public officer's or employee's business
9 to an employee that the public officer or employee supervises
10 if the supervised employee initiates the sale."

11 Section 8. A new section of the Governmental Conduct Act
12 is enacted to read:

13 "[NEW MATERIAL] PROHIBITED POLITICAL ACTIVITIES.--Public
14 officers and employees are prohibited from:

15 A. using official authority or influence for the
16 purpose of interfering with or affecting the result of an
17 election, a nomination for office or any other political
18 activity;

19 B. directly or indirectly coercing, attempting to
20 coerce, commanding or advising a state officer or employee to
21 pay, lend or contribute anything of value to a party,
22 committee, organization, agency or person for a political
23 purpose;

24 C. threatening to deny a promotion or pay increase
25 to an employee who does not vote for certain candidates,

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1 requiring an employee to contribute a percentage of the
2 employee's pay to a political fund, influencing a subordinate
3 employee to purchase a ticket to a political fundraising dinner
4 or similar event, advising an employee to take part in
5 political activity or similar activities; or

6 D. violating the officer's or employee's duty to
7 protect and conserve state property and shall not use state
8 property, or allow its use, for other than authorized
9 purposes."

10 Section 9. A new section of the Governmental Conduct Act
11 is enacted to read:

12 "[NEW MATERIAL] DISCLOSURE OF OUTSIDE EMPLOYMENT.--A
13 public officer or employee shall disclose in writing to the
14 supervisor of the officer or employee all employment engaged in
15 by the officer or employee other than the employment with the
16 state."

17 Section 10. A new section of the Governmental Conduct Act
18 is enacted to read:

19 "[NEW MATERIAL] USE OF PUBLIC FUNDS TO DEFEND ACTIONS
20 PROHIBITED.--Public money shall not be used to defend a public
21 officer or employee against a disciplinary, civil or criminal
22 action brought against the public officer or employee pursuant
23 to the provisions of the Governmental Conduct Act."

24 Section 11. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect immediately.

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